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REPORT
No. 716

PROVISION FOR ANNUITY FOR WIDOWS OF FEDERAL JUDGES

AUGUST 27 (legislative day, AUGUST 1), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 16]

The Committee on the Judiciary, to which was referred the bill (S. 16) to provide for payment of an annuity to widows of judges, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

AMENDMENT

Strike out all following the enacting clause and insert in lieu thereof the following:

That chapter 17 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"SEC. 375. Annuities to widows of justices and judges—

"(a) Except as provided in subsection (b) of this section, the widow of a justice of the United States or judge of the United States shall receive until her death or remarriage an annuity computed at the rate of 5 per centum of the annual salary of the office which was occupied by the justice or judge at the time of his death, or, if he died in retirement, the salary of the office which was occupied by the justice or judge at the time of his retirement, multiplied by the number of years, and the fraction representing any part of a year, that he served as justice or judge in active service in the Federal judiciary, as the term 'Federal judiciary' is in this section defined, but in no event to exceed 50 per centum of such annual salary. The term 'Federal judiciary', as used in this section, is, solely for the purposes of this section, hereby defined to include the following courts, namely, any court of the United States, the District Court for the Territory of Alaska, the District Court of the Virgin Islands, the United States District Court for the District of the Canal Zone, and no other court.

"(b) A widow who was married to the justice or judge less than ten years shall receive no annuity unless he is survived by an unmarried child or children under the age of twenty-one, for whose support she is responsible, in which event she

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shall receive an annuity as computed in subsection (a) of this section, until such child or children shall have reached the age of 21 years or shall have previously married, or until such widow dies or remarries.

"(c) In the case of a living widow of a justice or judge who died prior to the date of approval of this section, an annuity shall be paid as provided in this section as if such justice or judge had died on the day following such date.

"(d) Any justice or judge who resigned prior to the date of approval of this section and who continued to receive salary under the first paragraph of section 371 of this title shall be considered to be a justice or judge within the meaning of this section except that the annuity provided for the widow of such resigned justice or judge shall be computed on the basis of the salary which he was receiving when he resigned. No annuity shall be payable under this section in the case of the widow of a justice or judge who resigns on or after the date of approval of this section.

"(e) The Director of the Administrative Office of the United States Courts shall supervise the administration of this section."

SEC. 2. The analysis of chapter 17 of title 28, United States Code, immediately preceding section 371, is amended by inserting at the end thereof:

"375. Annuities to widows of justices and judges."

SEC. 3. Funds necessary to carry out the provisions of this Act may be appropriated out of any money in the Treasury not otherwise appropriated.

PURPOSE

The purpose of the proposed legislation is to provide for the payment of an annuity to the widows of justices or judges who die in retirement or who die in the judicial service. The purpose of the proposed amendments is to bring the language of the bill into conformity with the language and form of the Judicial Code. The bill as amended carries two provisions not embodied in the bill as originally proposed. It allows the tacking on of service on the district courts of certain Territories and possessions in the computation of the salary on which the annuities are based. Further, it covers judges who resigned rather than retired, prior to the date of approval of this act.

STATEMENT

1. NECESSITY FOR LEGISLATION

This bill is designed to relieve the anxieties of members of the Federal judiciary concerning the welfare of their families in the event of their death. It recognizes the inhibitions which surround the members of the Federal judiciary which prevent them from engaging in money-making pursuits and require them to depend primarily upon their salaries and whatever income they may have from an estate accumulated prior to going on the bench. In this connection it might well be pointed out that insurance programs taken out by judges prior to their elevation to the bench are, in many cases, not adequate at the present time due to the decrease in purchasing power of the dollar. This legislation recognizes that the independence of the Federal judiciary is dependent upon the freedom of judges from business and professional interests outside of the judiciary.

Further, legislation of this type is needed to attract practitioners to the Federal bench who are of proved ability and standing but who may not have accumulated substantial financial reserves, as well as to retain those of similar ability and financial resources presently serving on the Federal bench.

2. ANALYSIS OF THE LEGISLATION

A. *Definitions.*—Since this legislation is to be incorporated in chapter 17 of the Judicial Code, the definitions applicable to it are found in chapter 21 of the same code. Thus, in order to qualify under the proposed legislation, a judge must be one who has served or is serving as a justice on the United States Supreme Court or a judge on the courts of appeals, the district courts, Court of Claims, Court of Customs and Patent Appeals, the Court of Customs, and any court created by act of Congress on which judges are entitled to hold office during good behavior.

B. *Scope.*—The bill, as amended, proposes that the widow of a judge shall receive an annuity based on the judge's salary and number of years of service. This annuity will be computed by taking 5 percent of the judge's annual salary and multiplying it by the number of years the judge served in active service. At no time, however, may the annuity exceed 50 percent of the judge's annual salary. The annual salary referred to is the salary of the judicial office which the judge held at the time of his death, if he died in active service, or the salary of the judicial office which the judge held at the time of his retirement, if he was retired at the time of his death. In the case of a resigned judge it is the salary which he received at the time of his resignation. In the event that a judge has served on the district courts of the United States for the districts of Hawaii and Puerto Rico, the District Court for the Territory of Alaska, the District Court of the Virgin Islands, or the United States District Court for the District of the Canal Zone prior to his death or retirement, he is allowed to add such service, for the purpose of computation of the annuity, to his years of service on the bench of Federal courts of life tenure.

The legislation here proposed is retroactive in that it includes the widows of judges who died prior to the date of approval of the proposed bill. For the purpose of computing the annuity of such a widow, such a judge shall be deemed to have died the day following the date of approval of this legislation. It is intended that the widow of the justice or judge under this retroactive feature shall not receive the benefit of any years intervening between the date of the death of the judge and the date of approval of this legislation in the determination of the years of service of the judge and in the computation of the annuity provided. It was suggested to the committee that a contrary interpretation might be made under the present language. The committee does not believe that a change in the language of this feature is necessary but the committee does wish to make clear its intention in that regard. The effect of this feature of the bill on the estimated cost of the proposed annuity is discussed later in this report.

The only widows of Federal judges who died while in active service or while in retirement or after resignation on salary prior to the date of approval of this act who can be denied annuities under this bill are widows whose marriage to the judge is or has been of a duration of less than 10 years. Even then, however, if the judge leaves surviving him a child, unmarried, who has not attained his majority and for whose support such widow is responsible, the widow would be entitled to receive the annuity provided.

Under the bill the annuities provided would terminate with the death or remarriage of the widow receiving the annuity with one

exception. The exception occurs under the terms of subsection (b) when the judge is survived by a widow and minor children and under the terms of that subsection the annuity terminates prior to the death or remarriage of the widow when the minor child marries or attains his majority.

C. *Administration of the legislation.*—The administration of this bill is under the supervision of the Director of the Administrative Office of the United States Courts. Appropriation is to be made out of any funds in the Treasury not otherwise appropriated.

3. COST OF THE LEGISLATION

An estimate of the cost of the proposed legislation has been made by the Administrative Office of the United States Courts. Since the cost estimate must of necessity be based on several variables, it is intended only as an outside approximation of the cost. The cost is estimated only for the next 10 years.

The estimate was reached by dividing the problem into two parts. First, the cost of making the legislation retroactive was determined, and, second, the cost of the legislation in providing for annuities for the widows of judges who shall die after the enactment of the bill was calculated.

The number of widows, the pay scale, and the life expectancy were utilized to determine the cost of making this legislation retroactive. The resultant figure showing the cost of making this legislation retroactive for the first year is \$581,528. It is estimated that this figure will remain stationary until 1955 when it will begin to drop. At the end of 10 years it is estimated that this figure will be approximately half of that.

The cost of an annuity program for the future widows of judges is, of course, much less for the first few years than the cost of the annuity program for the present widows of judges. The estimated cost of the annuity program for the first year is \$61,971. It is expected that this figure will increase so that by 1960 the cost of the annuity program for future widows of judges will be \$492,408.

The peak year as far as the cost of both programs are concerned will be 1956, according to the estimate, at which time the cost of the annuities will total \$873,646.

4. RECOMMENDATION

The committee is of the opinion that legislation of this type is needed to maintain the independence of the Federal judiciary and to attract to the Federal bench and retain persons of ability and standing in the legal profession. Furthermore, after a study of the cost involved in implementing this legislation, the committee believes that such a cost is not unreasonable to satisfy the need related. For these reasons, the committee recommends the enactment of this legislation.

5. APPROVAL OF THE LEGISLATION

This legislation carries the endorsement of numerous members of the Federal bench, the strong endorsement of the Department of Justice, and the formal approval of the house of delegates of the American Bar Association.

While the administrative officer of the United States Courts is unable to officially approve the legislation without action by the Judicial Conference of the United States, he does state that "It would fulfill what is one of the deepest desires of many Federal judges in relation to their compensation."

6. APPENDIXES

Attached to and made a part of this report are the following:

- (1) The report of the Department of Justice;
- (2) The report of the Administrative Officer of the United States Courts; and
- (3) The resolution of the house of delegates of the American Bar Association favoring enactment of S. 3108, a similar bill introduced in the Eighty-first Congress.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ASSISTANT TO THE ATTORNEY GENERAL,
Washington, March 16, 1950.

Hon. PAT McCARRAN,
*Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.*

MY DEAR SENATOR: This is in reply to your request for the views of the Department of Justice concerning the bill (S. 3108) to provide for payment of an annuity to widows of judges.

The bill was prepared in this Department. It is designed to relieve anxieties and worries of members of the Federal judiciary by providing annuities for their widows thus making appointments to the Federal bench more attractive to practitioners of proved ability and standing, but who may not have accumulated substantial financial resources.

The existing provisions for retirement at full pay may seem generous enough, but the recent sudden deaths of Justices Rutledge and Murphy indicate that annuities for retired judges may not provide security of any kind should the judge die while in active service, or shortly after retirement, leaving a widow or minor children, or both. The bill applies in the case of all Federal judges, active and retired, having a life tenure. It provides that the widow of such a judge shall receive an annuity computed at the rate of 5 percent of the annual salary of the office, multiplied by the number of years in active service, but not in excess of 50 percent of such salary. Thus, if a judge is in active service but 5 years, his widow would receive 25 percent of the salary of his office, but if he serves 10 years or more, his widow would receive 50 percent of the salary. The annuity, so computed, would be paid to the widow for life or until she remarries. The provisions for annuities become operative only in the case of a widow who has been married to the judge for 5 years or more. If less than 5 years, the widow does not receive any annuity unless there are minor children, in which event she receives the annuity until the youngest child for whose support she is responsible reaches the age of 21.

The bill provides for tacking the service of a judge who has served on more than one court where he was entitled to remain during good behavior. The bill applies to widows of judges, active or retired, who died prior to the enactment of the bill. It is not believed that the bill will add any undue burden to the cost of the judiciary system. It simply means that, except in cases where a judge has been married less than 5 years and leaves no minor children surviving, a fraction, not to exceed one-half of the salary of the office, will be paid to his widow.

The Department of Justice strongly urges the enactment of this measure. The Director of the Bureau of the Budget has advised that there is no objection to the submission of this report.

Yours sincerely,

PEYTON FORD,
The Assistant to the Attorney General.

MARCH 27, 1950.

Hon. PAT McCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR McCARRAN: The bill about which you inquired of me on March 2, 1950 (S. 3108), is a bill aptly described in the title "to provide for payment of an annuity to widows of judges."

The law now provides for the payment of his salary to a judge or justice of the United States as defined in 28 United States Code 451 who retires after reaching the age of 70 years and after service of at least 10 years (28 U. S. C. 371). It also provides for the payment of his salary to a judge or justice who retires on account of permanent disability at any age if he has served 10 years and of half his salary if he has served less than 10 years (28 U. S. C. 372). But at present the salary of a Federal judge stops on the day of his death and there is no provision for a wife who may survive him.

The pending bill would make such a provision both for widows of Federal judges who may die hereafter and for surviving widows of judges who have died previously. According to its terms the widow of a judge shall receive throughout her life after his death, an annuity computed at the rate of 5 percent per annum of his salary for every year or fraction of a year of his active service, the total not to exceed 50 percent of his salary. In case of the widow's remarriage her annuity shall cease. A widow who was married to the judge less than 5 years before his death, shall not receive any annuity, unless at the time of his death there are unmarried children of the judge less than 21 years old for whose support she is responsible. In that case the annuity shall cease when the youngest of such children reaches the age of 21.

The Judicial Conference of the United States, under which I act, has taken no action in regard to the pending bill, and therefore I am not in a position to express any official opinion concerning it. I can, however, point out what is well known to those who are acquainted with Federal judges, that the lack of any provision at present for their wives in case of their death is a frequent cause of anxiety. In a number of recent instances widows of Federal judges have been left with scant means of support. It is the general testimony of judges of the Federal courts that their salaries are not sufficient to enable them to live in a way appropriate to their office, to educate their children and at the same time to build up an estate sufficient for the support of their dependents after they are gone. The pending bill by providing for their widows would set their minds at ease on this score and help them to concentrate with more singleness of thought on the performance of their judicial duties. It would fulfill what is one of the deepest desires of many Federal judges in relation to their compensation.

Sincerely yours,

HENRY P. CHANDLER.

RESOLUTION ADOPTED BY THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION UPON RECOMMENDATION OF THE COMMITTEE ON DRAFT, FEBRUARY 28, 1950

Whereas, adequate provision should be made for the dependents of Federal judges who die while in service or during retirement: Now, therefore be it

Resolved, That the House of Delegates approve S. 3108 entitled "A bill to provide for payment of an annuity to widows of judges" introduced by Senator Pat McCarran on February 24, 1950, and which bill is also to be introduced to the House of Representatives; and be it further

Resolved, That copies of this resolution be sent to the Honorable Pat McCarran, chairman of the Senate Committee on the Judiciary and Hon. Emanuel Celler, chairman of the House Committee on the Judiciary.

I hereby certify that the above is a true and correct copy of the resolution adopted by the House of Delegates.

JOSEPH D. STECHER, *Secretary*.

MARCH 14, 1950.

